

Remarks:

Claims 1-29 are pending in the subject application. Claims 23-29 were previously withdrawn and are cancelled herein. Claims 1-22 stand rejected.

Nonstatutory Obviousness-Type Double Patenting Rejection

Although Applicant respectfully disagrees with the Examiner's conclusion that the inventions recited in claims of the Subject Application and in claims of co-pending application Serial No. 11/013,842 are not patentably distinct, Applicant herewith submits a terminal disclaimer in order to obviate the double patenting rejection and advance prosecution of the Subject Application. A officer of the assignee of the Subject Application, TDY Industries, Inc., has signed the terminal disclaimer on behalf of the assignee.

The Subject Application has the earlier filing date of the two co-pending applications. Pursuant to MPEP § 804 and other sections of the MPEP, it is proper to ignore an obviousness-type double patenting ("ODP") rejection in the earlier-filed application. As explained in the MPEP, if the ODP rejection is the last rejection remaining in the earlier-filed application, the examiner should withdraw the ODP rejection and allow the earlier-filed application to issue, without need for the Applicant to submit a terminal disclaimer. In the present Office Action, the Examiner pointed out that the ODP rejection should only be withdrawn while the later-filed application is rejectable on other grounds. The Examiner further alleges that "the later-filed application (the '842 application) is not subject to any grounds of rejection." In telephone conferences with the Examiner on January 3 and January 9, 2008, the Examiner advised the undersigned that all rejections previously made in the '842 application have been withdrawn. Up to the filing of this response, however, the Patent Office had not yet notified the representative of the applicant in the '842 application regarding the withdrawal of the rejections, and no information regarding the withdrawal is provided on the PAIR system. Further, we note that an ODP rejection was not issued in the '842 application.

Nevertheless, in reliance on the Examiner's statements regarding the status of the previous rejections in the '842 application, and in order to advance prosecution of

the Subject Application, Applicant herewith submits a terminal disclaimer. Thus, Applicant and the undersigned respectfully request withdrawal of the ODP rejection and allowance of claims 1-22.

Conclusion:

Applicant respectfully submits that the claims of the Subject Application, as amended herein, are directed to patentable subject matter. Applicant respectfully requests issuance of a Notice of Allowance at an early date. If the Examiner is of the opinion that the Subject Application is in condition for disposition other than allowance, Applicant respectfully requests that the Examiner contact Applicant's attorney at the telephone number listed below so that those concerns may be addressed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matthew P. Frederick', written over a horizontal line.

Matthew P. Frederick, Esq.
Registration No. 60,469
Attorney for Applicant

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, Pennsylvania 15222-2312
Phone: 412.355.6792